

MICHAEL E. BREWER, Bar No. 177912
 ANNE-MARIE WAGGONER, Bar No. 173407
 LITTLER MENDELSON, P.C.
 1255 Treat Boulevard, Suite 600
 Walnut Creek, CA 94597
 Telephone: 925.932.2468
mbrewer@littler.com
awaggoner@littler.com

JEREMY ROTH, Bar No. 129007
 DAVID J. DOW, Bar No. 179407
 JERRILYN T. MALANA, Bar No. 195260
 LITTLER MENDELSON, P.C.
 501 West Broadway, Suite 900
 San Diego, CA 92101
 Telephone: 619.515.1802
jroth@littler.com
ddow@littler.com
jmalana@littler.com

Attorneys for Defendant
 AUTOZONE, INC. (All actions)

MICHAEL A. HOFFMAN, Bar No. 162496
 ARENA HOFFMAN, LLP
 44 Montgomery Street, Suite 1200
 San Francisco, CA 94104
 Telephone: 415.433-1414
mhoffman@arenahoffman.com

Attorney for Defendant
 AUTOZONE, INC. (Ellison action, only)

RICHARD E. QUINTILONE II, Bar No. 200995
 QUINTILONE & ASSOCIATES
 22974 El Toro Road, Suite 100
 Lake Forest, CA 92630
 Telephone: 949.458.9675
req@quintl.com

Attorneys for Plaintiff
 WILLIAM DOLAND

KEVIN T. BARNES, Bar No. 138477
 GREGG LANDER, Bar No. 194018
 LAW OFFICES OF KEVIN T. BARNES
 5670 Wilshire Blvd., Suite 1460
 Los Angeles, CA 90036-5664
 Telephone: 310.549.9100
Barnes@kbarnes.com
Lander@kbarnes.com

Attorneys for Plaintiff
 HAYDEE ESCALANTE

MARC PRIMO, Bar No. 216796
 MONICA BALDERRAMA, Bar No. 196424
 INITIATIVE LEGAL GROUP APC
 1800 Century Park East, 2nd Floor
 Los Angeles, CA 90067
 Telephone: 310-556-5637
MPrimo@InitiativeLegal.com
MBalderrama@InitiativeLegal.com

Attorneys for Plaintiff
 JIMMY ELLISON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re: AUTOZONE, INC., WAGE AND
HOUR EMPLOYMENT PRACTICES
LITIGATION

Case No. 3:10-md-02159-CRB

**JOINT CASE MANAGEMENT
STATEMENT**

Further CMC Date: January 7, 2011
Time: 8:30 a.m.
Courtroom 8, 19th Floor

The Honorable Charles R. Breyer

The Parties respectfully submit this Joint Case Management Conference Statement for the Further Case Management Conference, scheduled for January 7, 2011, at 8:30 a.m.

A. Coordinated Actions, Parties, and Their Counsel

Plaintiffs and their counsel in the five¹ coordinated and consolidated for pre-trial proceedings are as follows:

* *Ellison v. AutoZone, Inc.* (“*Ellison*”) - Plaintiff Jimmy Ellison is represented by Marc Primo, David Lishian Cheng, and Monica Balderrama of Initiative Legal Group APC.

* *Escalante v. AutoZone, Inc.* (“*Escalante*”) – Plaintiff Haydee Escalante is represented by Kevin T. Barnes and Gregg Lander of the Law Offices of Kevin T. Barnes and Joseph Antonelli and Janelle Carney of the Law Office of Joseph Antonelli.

* *Escobar v. AutoZone, Inc.* (“*Escobar*”) - Plaintiff Silvia Escobar is represented by Aldon Bolanos of the Law Offices of Aldon Bolanos.

* *Maynard v. AutoZone, Inc.* (“*Maynard*”) - Plaintiff Bruce Paul Maynard is

¹ Since the initial case management conference, on August 20, 2010, an additional action, *Escalante v. AutoZone, Inc.*, has been coordinated and consolidated with the original four actions.

1 represented by Shaun Setareh of the Law Offices of Shaun Setareh and Mark R. Thierman of the
2 Thierman Law Firm, PC.

3 * *Doland v. AutoZone, Inc.* (“*Doland*”) - Plaintiff William Doland is
4 represented by Richard E. Quintilone II of Quintilone and Associates, Roger Richard Carter of the
5 Carter Law Firm, and Scott B. Cooper of the Cooper Law Firm.

6 Defendant AutoZone, Inc. is represented in all five coordinated and consolidated
7 actions by Littler Mendelson, P.C. In addition, in the *Ellison* matter only, Defendant is jointly
8 represented by Littler Mendelson, P.C. and Michael Hoffman, Esq. of Arena Hoffman, LLP.

9 **B. Jurisdiction and Service**

10 On June 15, 2010, the U.S. Judicial Panel on Multidistrict Litigation (“JPML”)
11 granted Defendant’s motion to transfer and ordered that *Doland* and *Maynard* be transferred to the
12 Northern District of California to United States District Judge Charles R. Breyer for coordinated and
13 consolidated pretrial proceedings with *Ellison* and *Escobar*, which are related cases pending in the
14 Northern District.

15 On October 20, 2010, the JPML issued a conditional transfer order transferring
16 *Escalante* to the Northern District of California to Judge Charles R. Breyer for coordinated and
17 consolidated pretrial proceedings with *Ellison*, *Escobar*, *Doland*, and *Maynard*. On October 29,
18 2010, this Court gave notice of the transfer of *Escalante* and assignment to Judge Breyer.

19 All named parties have been served and have appeared.

20 **C. Facts**

21 **1. *Ellison***

22 The *Ellison* matter was filed on December 7, 2006, in the Northern District of
23 California, and alleged a putative wage and hour class action against Defendant. The putative class
24 in *Ellison* includes all current and former non-exempt AutoZone store employees in California. The
25 operative Complaint alleges AutoZone requires its hourly store employees to work off-the-clock,
26 fails to provide meal and rest breaks, does not pay minimum wage and overtime wages as required
27 by law, does not provide accurate itemized wage statements, does not does not pay wages when due,
28 and requires employees to purchase their own uniforms.

The Second Amended Complaint alleges causes of action for: (1) Failure to provide rest periods in violation of California Labor Code sections 226.7 and 516, (2) Failure to provide meal periods in violation of California Labor Code sections 226.7, 512 and 516, (3) Failure to timely pay final wages in violation of California Labor Code section 203, (4) Failure to pay wages, (5) Failure to pay minimum wages in violation of California and federal law, (6) Failure to pay overtime wages in violation of California and federal law, (7) Failure to provide accurate itemized wage statements in violation of Labor Code section 226, (8) Failure to pay for split shifts, (9) Failure to pay for the purchase of uniforms in violation of California Labor Code section 2802, and (10) Unlawful business practices in violation of California Business & Professions Code section 17200, et seq. Plaintiff Jimmy Ellison also seeks penalties pursuant to the California Private Attorneys General Act (“PAGA”), California Labor Code §2699.

The *Ellison* matter has been stayed since September 10, 2007.

2. *Maynard*

The *Maynard* action was filed on August 12, 2009, in Los Angeles County Superior Court and removed to federal court in the Central District of California on October 2, 2009. The putative class in *Maynard* includes all former non-exempt AutoZone store employees in California. The Complaint alleges claims against AutoZone for waiting time penalties pursuant to California Labor Code section 203 for the alleged failure to pay employees all wages due at the time of termination of employment. The Complaint alleges causes of action for: (1) Waiting time penalties under California Labor Code section 203 and (2) Unfair business practices under California Business & Professions Code section 17200, et seq. The *Maynard* matter was been deemed related to another class action lawsuit, *Doland v. AutoZone, Inc.*, which was then-pending in the Central District.

3. *Doland*

The *Doland* action was filed on August 28, 2009, in Orange County Superior Court and removed to federal court in the Central District of California on October 2, 2009. The putative class in *Doland* includes all current and former non-exempt AutoZone store employees in California. The Complaint alleges AutoZone failed to provide non-exempt California store employees with meal and rest breaks, failed to timely pay all wages due at the time of termination of employment, and

1 failed to provide accurate itemized wage statements. The Complaint alleges causes of action for: (1)
 2 Failure to provide meal periods in violation of California Labor Code sections 226.7 and 512 and the
 3 California Wage Orders, (2) Failure to provide rest breaks in violation of Labor Code section 226.7
 4 and the California Wage Orders, (3) Failure to timely pay all wages due at termination of
 5 employment in violation of California Labor Code section 203, (4) Failure to provide accurate wage
 6 statements in violation of California Labor Code section 226(a), and (5) Unfair business practices in
 7 violation of California Business and Professions Code section 17200, et seq. The *Doland* matter was
 8 deemed related to the *Maynard* matter by the Central District.

9 **4. Escobar**

10 Plaintiff filed this putative class action against Defendant, her former employer.
 11 Plaintiff has pleaded multiple violations of California's wage and hour laws for Defendant's alleged:
 12 (1) failure to provide uniforms; (2) failure to reimburse for necessary expenditures; (3) failure to
 13 provide timely and accurate wage statements; (4) failure to maintain complete and accurate payroll
 14 records; (5) commission of unfair business practices; and (6) failure to provide meal and rest breaks.
 15 Plaintiff seeks compensatory and injunctive relief, as well as penalties pursuant to the California
 16 Private Attorney's General Act ("PAGA"), California Labor Code §2699.

17 The *Escobar* matter has been stayed since March 2, 2010.

18 **5. Escalante**

19 Plaintiff filed this putative class action on August 4, 2010, against Defendant, her
 20 former employer. Although her original complaint pleads multiple violations of California's wage
 21 and hour laws by Defendant, the parties have stipulated to the filing of an amended complaint
 22 containing the following claims, only: (1) failure to fully reimburse for work expenses; (2) penalties
 23 pursuant to PAGA; (3) unfair business practices; and (4) declaratory relief.

24 In all five coordinated and consolidated actions, Defendant denies Plaintiffs'
 25 allegations in their entirety. Defendant asserts that it has complied with applicable California law
 26 and that Plaintiffs and the putative class members are entitled to no recovery. Defendant also
 27 contends that the cases are not appropriate for class treatment.

D. Legal Issues in Dispute

The parties dispute at least the following legal issues, without limitation:

1. Whether these actions should proceed as class actions and whether class certification should be granted;
2. Whether Plaintiffs are adequate class representative(s);
3. Whether Plaintiffs and the members of the putative class are entitled to legal or equitable relief on any of the claims pleaded in the actions;
4. Whether Defendant failed to reimburse Plaintiffs and the members of the putative class for expenses in violation of California Labor Code § 2802;
5. Whether Defendant failed to furnish Plaintiffs and the members of the putative class accurate itemized wage statements in violation of California Labor Code § 226;
6. Whether Defendant failed to maintain accurate time records for Plaintiffs and the members of the putative class, in violation of California Labor Code § 1174(d);
7. Whether Defendant committed acts of unfair competition in violation of California Business & Professions Code § 17200;
8. Whether Defendant failed to provide Plaintiffs and the members of the putative class with meal and/or rest breaks in violation of California Labor Code §§ 226.7 and 512;
9. Whether Plaintiffs and the members of the putative class are entitled to waiting time penalties pursuant to California Labor Code §§ 201, 202, and 203;
10. Whether Defendant failed to pay Plaintiffs and the members of the putative class minimum, regular, or overtime wages;
11. Whether Defendant failed to pay Plaintiffs and the members of the putative class for split shifts;
12. Whether Plaintiffs and the members of the putative class are entitled to recover penalties under PAGA;
13. Whether injunctive relief may be awarded; and
14. Whether compensatory damages, costs, or attorney's fees may be awarded.

E. Motions

Plaintiffs intend to file a motion for class certification at the appropriate time.

Defendant intends to file a motion for summary judgment and/or partial summary judgment, and a motion to decertify the putative class, at the appropriate time.

F. Amendment of Pleadings

Plaintiff in the *Escalante* action intends to file an amended complaint at the appropriate time, pursuant to stipulation.

G. Evidence Preservation

The parties have preserved evidence in electronic or other form that they reasonably and in good faith believe may be relevant to the issues reasonably evident in this action.

H. Disclosures

Defendant and Plaintiff Ellison served their initial disclosures on December 15, 2010. As of the time of filing this joint case management statement, no other parties had served initial disclosures.

I. Discovery Plan

Since the case is stayed pending the California Supreme Court decision in *Brinker Restaurant Corporation v. Superior Court*, 165 Cal. App. 4th 25, 80 Cal. Rptr. 3d 781 (2008), *rev. granted*, 196 P.3d 215 (Cal. 2008) ("*Brinker*"), it is premature to commence or conduct discovery, create a discovery plan, or make orders concerning discovery. However, Plaintiff in the *Escalante* case requests the court lift the discovery stay as to the *Escalante* matter as this case will not have any cause of action which is at issue in the appeal of the *Brinker* case once the amended complaint, which Defendant has stipulated to, is filed. Defendant opposes the partial lifting of the discovery stay in *Escalante*. The *Brinker* case presents issues concerning California law not only as to meal breaks and rest breaks, but also concerning the propriety of certification of California wage and hour class action lawsuits, generally. In addition, the JPML transferred and consolidated these actions to "eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel, and the judiciary." See JPML Transfer Order of June 15, 2010. If the discovery stay is lifted in *Escalante*, then that will thwart the

1 purposes of consolidation, as the parties will be litigating the consolidated cases on separate tracks,
 2 and the discovery sought by Plaintiff in *Escalante* will be duplicative of the discovery that will be
 3 sought later in the other four consolidated actions.

4 **J. Electronic Discovery**

5 The parties will produce all electronically stored information in paper form unless the
 6 parties agree or the Court orders otherwise.

7 **K. Class Action**

8 Plaintiffs have filed these cases as putative class actions and intend to make a motion
 9 for class certification at the appropriate time. Defendant may also make a motion to decertify the
 10 cases as a class action at the appropriate time.

11 Because proceedings are stayed until such time the California Supreme Court issues
 12 its decision in *Brinker*, it is premature to set a briefing or hearing schedule on motions for class
 13 certification or decertification, subject to the request for relief from the stay by Escalante as set forth
 14 above in Section I.

15 **L. Other Related Cases**

16 There are also three other putative class actions pending against Defendant in
 17 California federal and state courts based on the same general set of alleged facts and alleged legal
 18 violations, as follows:

19 **1. Claudia Moreno and Michelle Medrano v. AutoZone, Inc., United States** 20 **Court of Appeals, Ninth Circuit, Case No. 09-17503 (USDC CA Case No.** 21 **C05-04432-CRB) (“Moreno”)**

22 On December 10, 2010, the Ninth Circuit Court of Appeals issued a Memorandum
 23 opinion affirming the final judgment entered by this Court in favor of AutoZone on October 13,
 24 2009. This Court has previously deemed the *Moreno* action related to *Ellison*.

25 **2. Carl Myart v. AutoZone, Inc., Superior Court of the State of California in** 26 **and for the County of Orange, Case No. 05-CC-03219 (“Myart”)**

27 *Myart* was filed on February 16, 2005, and alleged as a putative wage and hour class
 28 action against AutoZone. The putative class includes all current and former non-exempt hourly
 workers employed in California. The operative complaint alleges multiple causes of action

1 pertaining to alleged wage and hour violations by AutoZone. Class certification has been granted in
 2 *Myart* as to the plaintiff's off-the-clock theory, which alleges that AutoZone failed to pay for all
 3 hours worked. The parties have recently agreed upon a settlement in that matter and are in the
 4 process of formalizing the settlement prior to seeking preliminary approval of the settlement from
 5 the Superior Court.

6 **3. *Adrianna Villalobos v. AutoZone, Inc., et al.*, Superior Court of California**
 7 **in and for the County of Los Angeles, Case No. BC368371 (“Villalobos”)**

8 The original complaint was filed on March 22, 2007. The Complaint alleges the
 9 following causes of action: (1) failure to pay overtime [Labor Code §§ 510, 1194]; (2) unlawful
 10 collection of wages previously paid to employees, and failure to indemnify employees for expenses
 11 for uniforms and equipment [Labor Code §§ 221, 2802]; (3) failure to provide meal periods [Labor
 12 Code § 226.7]; (4) failure to provide rest periods [Labor Code § 226.7]; (5) failure to timely pay
 13 wages [Labor Code §§ 201, 202, 203]; (6) failure to provide accurate wage statements and maintain
 14 accurate records [Labor Code §§ 226, 1174]; (7) civil penalties pursuant to the Private Attorneys
 15 General Act [Labor Code § 2699]; and (8) unlawful business practices [Business & Professions
 16 Code § 17200, et seq.].

17 *Villalobos* has been stayed since December 7, 2007, following the state court's grant
 18 of AutoZone's motion for stay based on earlier-filed class action lawsuits containing similar claims
 19 in state and federal court. The matter remains stayed pending the California Supreme Court's
 20 decision regarding an employer's obligation pertaining to meal and rest periods in *Brinker*.

21 **M. Relief**

22 **1. Plaintiff's Statement**

23 Plaintiffs have brought this class action lawsuit against Defendant to recover, among
 24 other things, wages and penalties associated with not having been provided with proper meal and
 25 rest breaks. Additionally, Plaintiffs state derivative causes of action seeking penalties for non-
 26 payment of wages at the time of termination of employment, failure to provide accurate itemized
 27 statements, and unfair competition pursuant to Business and Professions Code Section 17200. In
 28

1 addition to the above mentioned damages, Plaintiffs seek restitution, injunctive and declaratory
2 relief, attorneys' fees and costs, and prejudgment interest.

3 Calculating damages is premature, as Plaintiffs will first need to ascertain the number
4 of putative class members, average rates of pay, and violation rates, all of which information will be
5 requested through discovery.

6 **2. Defendant's Statement**

7 Defendant claims Plaintiffs and the members of the putative class are not entitled to
8 any legal or equitable relief, because Defendant is not liable to Plaintiffs or the putative class
9 members on any of their claims for relief, or in the event Defendant is found liable to Plaintiffs or
10 the putative class members on any of their claims, Plaintiffs and the putative class members have not
11 sustained recoverable damages.

12 **N. Settlement – Alternative Dispute Resolution**

13 Since proceedings are stayed until such time the California Supreme Court issues its
14 decision in *Brinker*, it is premature to assign these cases to ADR at the present time.

15 The parties have not engaged in any settlement discussions to date.

16 **O. Consent to Magistrate Judge for All Purposes**

17 The Parties do not consent to assignment of this case to a Magistrate Judge for all
18 purposes.

19 **P. Other References**

20 This case is not suitable for reference to binding arbitration or a special master.

21 **Q. Narrowing of Issues**

22 The issues in this case cannot be narrowed by agreement. The parties will meet and
23 confer prior to trial to attempt to expedite the admission of evidence through stipulation. The parties
24 may be able to narrow issues by agreement following the California Supreme Court's decision in
25 *Brinker*.

26 **R. Expedited Schedule**

27 This case is not appropriate for an expedited schedule.

1 **S. Scheduling**

2 Per the Court's order of August 20, 2010, all proceedings with the exception of initial
3 disclosure are stayed until such time the California Supreme Court issues its decision in *Brinker*.
4 Thus, it is premature to set a case schedule, subject to the request for relief from the stay by
5 Escalante as set forth above in section I.

6 **T. Trial**

7 Per the Court's order of August 20, 2010, all proceedings with the exception of initial
8 disclosure are stayed until such time the California Supreme Court issues its decision in *Brinker*.
9 Thus, it is premature to set the case for trial, subject to the request for relief from the stay by
10 Escalante as set forth above in section I.

11 **U. Disclosure of Non-Party Interested Entities or Persons**

12 Defendant is not aware of any persons or entities, besides the parties, that have either:
13 (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any
14 other kind of interest that could be substantially affected by the outcome of the proceeding.

1 Dated: December 30, 2010

Respectfully submitted,

2
3 /s/ Anne-Marie Waggoner
4 MICHAEL E. BREWER
5 ANNE-MARIE WAGGONER
6 LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
AUTOZONE, INC.

7 Dated: December 30, 2010

8
9 /s/ Michael A. Hoffman
10 MICHAEL A. HOFFMAN
11 ARENA HOFFMAN, LLP
Attorney for Defendant
AUTOZONE, INC. (*Ellison* case, only)

12 Dated: December 30, 2010

13
14 /s/ Richard E. Quintilone II
15 ROGER RICHARD CARTER
16 RICHARD E. QUINTILONE II
Attorneys for Plaintiff
WILLIAM DOLAND

17 Dated: December 30, 2010

18
19 /s/ Kevin Barnes
20 KEVIN BARNES
21 GREGG LANDER
Attorney for Plaintiff
HAYDEE ESCALANTE

22 Dated: December 30, 2010

23
24 /s/ Monica Balderrama
25 MONICA BALDERRAMA
26 Attorney for Plaintiff
27 HAYDEE ESCALANTE

28 Firmwide:99348829.1 013306.2161

DECLARATION OF COUNSEL REGARDING SIGNATORIES' CONCURRENCE
WITH THE ELECTRONIC FILING OF THIS DOCUMENT

I, Anne-Marie Waggoner, hereby declare and state as follows:

1. I am an attorney licensed to practice in the courts of the State of California and the U.S. District Court for the Northern District of California. I am Of Counsel at Littler Mendelson, A Professional Corporation, and counsel of record for Defendant AutoZone, Inc. in the above-captioned consolidated actions.

2. In accordance with U.S. District Court for the Northern District of California, General Order No. 45, I have obtained the concurrence for the filing of this document from each of the other signatories hereto. Littler Mendelson will maintain records to support this concurrence for subsequent production for the court if so ordered or for inspection upon request by a party until one year after final resolution of the action (including appeal, if any).

I hereby declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, and that this Declaration was executed on December 30, 2010, at Walnut Creek, California.

/s/

ANNE-MARIE WAGGONER